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10/564,636	01/13/2006	Tomohiro Yamada	2785-42013900	2130
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EXAMINER				
RASHID, HARUNUR				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/564,636

**Applicant(s)**

YAMADA, TOMOHIRO

**Examiner**

HARUNUR RASHID

**Art Unit**

2458

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-8 are pending in this examination.

#### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

3. Claim 1, line 4, recited the limitation "writer";  
Claim 1, line 7, recited the limitation "reader";  
Claim 2, line 2, recited the limitation "writer" and "updater";  
Claim 3, line 3, recited the limitation "holder";  
Claim 3, line 5, recited the limitation "specifier";  
The terminology is not found in the specification  
Appropriate correction is required.

#### ***Claim Objections***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

4. As to claim 5, the claim recites, "program storage medium". Specification does not define "program storage medium";

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 refers the limitation "tangibly embodying" in line 5.

There are insufficient antecedent basis for this limitation in the claim and claim is indefinite.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. As to claim 1, the claim recite "a content output control apparatus", that constitutes software modules or blocks per se, also body of the claim are constitutes

software modules per se (writer, reader, acceptor...) are just limited to software modules per se, (see specification page 3, lines 17-25) because claim of the body are instructions and instructions are functional descriptive material. Instruction without adding tangible subject matter therefore, claim are recite nonstatutory subject matter, and rejected under 35 U.S.C 101.

7. Likewise, claims 2-4 are dependent claims that depend on claims 1 and fail to resolve the above problems, and also recite additional details on instruction without adding tangible subject matter therefore, these claims recite nonstatutory subject matter, and rejected under 35 U.S.C 101.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zervas et al. (herein after Zervas) WIPO International publication Number WO-02/23910A1, in view of Frerichs et al. (herein after Frerichs) USPGPub No.: 20020120747.

8. As to claim 1, Zervas discloses a content output apparatus that outputs any one of N contents individually transmitted through N channels registered in a predetermined order (Page 13, lines 11-15; also see page 10, lines 1-10), the content output apparatus comprising:

writer for respectively writing M contents transmitted through M channels that exist in said predetermined order (Page 13, lines 11-15; also see page 10, lines 1-10, page 14, lines 10-20), and include a predetermined channel into M buffer memories (Page 4 lines 18-30; also see page 13, lines 11-15);

reader for reading a content that is transmitted through said predetermined channel from any one of said M buffer memories (Page 7, lines 7-25; also see page 10, lines 1-10); and an acceptor for accepting a change from said predetermined channel to an other channel (page 13, lines 10-15; another path) in said predetermined order (Page 10, lines 1-15; also see page 13, lines 11-15), wherein

said reader changes in response to said change a target to be read from the buffer memory which is written with a first content (page 13, lines 26-33) that is transmitted through said predetermined (Page 13, lines 11-15) channel to the buffer memory (page 13, lines 26-33) that is transmitted through said other channel (page 13, lines 10-15; another path), and

written with a second content ([0024] switch content; note; switch to new content) and writer renews ([0024] delete; note; delete content so new content may store or renews, also see [0027], in response to said change ([0027] ; recall), the content written in the buffer memory that is apart from the buffer memory which is

written with said second content ([0024] switch content; note; switch to new content) by a predetermined number in said predetermined order to the other content ([0027]; also see 0025).

Zervas does not explicitly disclose written with a second content and writer renews in response to said change, the content written in the buffer memory that is apart from the buffer memory which is written with said second content by a predetermined number in said predetermined order to the other content. However, Frerichs discloses written with a second content ([0024] switch content; note; switch to new content) and writer renews ([0024] delete; note; delete content so new content may store, also see [0027]), in response to said change ([0027] ; recall), the content written in the buffer memory that is apart from the buffer memory which is written with said second content ([0024] switch content; note; switch to new content) by a predetermined number in said predetermined order to the other content ([0027]; also see 0025).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teaching of Frerichs with the teaching of Zervas by including the feature of saving second content in a memory, in order for Zervas's system to allows the user to listen to the audio continuously from second memory without any silence or dead air time when user switching the channel.

As to claim 2, Zervas discloses a content output apparatus according to claim 1, wherein said writer includes an updater for updating any one of said M buffer memories in response to the change of said predetermined channel (Page 8, lines 11-20).

As to claim 3, Zervas discloses a content output apparatus according to claim 1, further comprising: a holder for holding a table in which said N channels are registered in said predetermined order (Page 14, lines 15-17); and a specifier for specifying said M channels by reference to said table held by said holder (Page 13, lines 16-22).

As to claim 4, Zervas discloses a content output apparatus according to claim 1, wherein said contents are streaming contents transmitted in real time (Page 2, lines 3-4 & 10-11).

As to claim 5, Zervas discloses a program storage medium readable by a content output apparatus, tangibly embodying content output control program of instructions executable by the content output apparatus to perform method steps such that the content output apparatus outputs any one of N contents individually transmitted through N channels registered in a predetermined order (page 4, lines 18-30; also see page 13, lines 11-15), the method step comprising:

a writing step of respectively writing M contents transmitted through M channels that exist in said predetermined (Page 13, lines 11-15; also see page 10, lines 1-10), order and include a predetermined channel into M buffer memories (Page 4, lines 18-30; also see page 13, lines 11-15); said writing step being performed by a writer ([0024], also see [0027];



a reading step of reading a content that is transmitted through said predetermined channel from any one of said M buffer memories (Page 7, lines 7-25; also see page 10, lines 1-10); said reading step being performed by a reader and an accepting step of accepting a change from said predetermined channel to an other channel (page 13, lines 10-15; another path) in said predetermined order (Page 10, lines 1-15; also see page 13, lines 11-15),

wherein said reader changes in response to said change a target to be read from the buffer memory which is written with a first content (page 13, lines 26-33) that is transmitted through said predetermined (Page 13, lines 11-15) channel to the buffer memory (page 13, lines 26-33) that is transmitted through said other channel (page 13, lines 10-15; another path), and

written with a second content ([0024] switch content; note; switch to new content) and writer renews ([0024] delete; note; delete content so new content may store or renews, also see [0027], in response to said change ([0027] ; recall), the content written in the buffer memory that is apart from the buffer memory which is written with said second content ([0024] switch content; note; switch to new content) by a predetermined number in said predetermined order to the other content ([0027]; also see 0025).

Zervas does not explicitly disclose written with a second content and writer renews in response to said change, the content written in the buffer memory that is apart from the buffer memory which is written with said second content by a predetermined number in said predetermined order to the other content. However,

Frerichs discloses written with a second content ([0024] switch content; note; switch to new content) and writer renews ([0024] delete; note; delete content so new content may store, also see [0027]), in response to said change ([0027] ; recall), the content written in the buffer memory that is apart from the buffer memory which is written with said second content ([0024] switch content; note; switch to new content) by a predetermined number in said predetermined order to the other content ([0027]; also see 0025).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teaching of Frerichs with the teaching of Zervas by including the feature of saving second content in a memory, in order for Zervas's system to allows the user to listen to the audio continuously from second memory without any silence or dead air time when user switching the channel.

As to claim 6, Zervas discloses a content output control method to be practiced by a content output apparatus that outputs any one of N contents individually transmitted through N channels registered in a predetermined order (page 4, lines 18-30; also see page 13, lines 11-15), the content output control method comprising: a writing step of respectively writing M contents transmitted through M channels that exist in said predetermined order (Page 13, lines 11-15), and include a predetermined channel into M buffer memories (Page 4, lines 11-15; also see page 13, lines 18-30); said writing step being performed by a writer ([0024], also see [0027]; a reading step of reading a content that is transmitted through said predetermined channel from any one of said M

buffer memories (Page 7, lines 7-25); said reading step being performed by a reader ([0024], also see [0027]; and

an accepting step of accepting a change from of said predetermined channel to an other channel in said predetermined order (Page 10, lines 1-7; also see page 13, lines 11-15);

wherein said reader changes in response to said change, a target to be read from the buffer memory which is written with a first content (page 13, lines 26-33) that is transmitted through said predetermined (Page 13, lines 11-25) channel to the buffer memory (page 13, lines 26-33) that is transmitted through said other channel (page 13, lines 10-15; another path), and

written with a second content ([0024] switch content; note; switch to new content) and writer renews ([0024] delete; note; delete content so new content may store or renews, also see [0027], in response to said change ([0027] ; recall), the content written in the buffer memory that is apart from the buffer memory which is written with said second content ([0024] switch content; note; switch to new content) by a predetermined number in said predetermined order to the other content ([0027]; also see 0025).

Zervas does not explicitly disclose written with a second content and writer renews in response to said change, the content written in the buffer memory that is apart from the buffer memory which is written with said second content by a predetermined number in said predetermined order to the other content. However, Frerichs discloses written with a second content ([0024] switch content; note; switch to

new content) and writer renews ([0024] delete; note; delete content so new content may store, also see [0027]), in response to said change ([0027] ; recall), the content written in the buffer memory that is apart from the buffer memory which is written with said second content ([0024] switch content; note; switch to new content) by a predetermined number in said predetermined order to the other content ([0027]; also see 0025).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teaching of Frerichs with the teaching of Zervas by including the feature of saving second content in a memory, in order for Zervas's system to allows the user to listen to the audio continuously from second memory without any silence or dead air time when user switching the channel.

As to claim 7, Zervas discloses a content output control method according to claim 6, wherein said reading step includes a changing step of, when the change of said predetermined (page 13, lines 11-15; also see page 10, lines 1-10) channel is accepted in said accepting step, changing a buffer memory from which content is to be read (Page 8, lines 11-20).

As to claim 8, Zervas discloses a content output control method according to claim 6, wherein said writing step includes a replacing step of, when the change of said predetermined (page 13, lines 11-15; also see page 10, lines 1-10) channel is accepted in said accepting step, replacing any one of said M channels with any one of channels

that are included in said N channels and are not included in said M channels (page 13, lines 11-20).

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. **Examiner's Note:** Examiner has cited particular columns/paragraphs/pages and line numbers in the references as applied to the claims above for the convenience of the

applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HARUNUR RASHID whose telephone number is (571)270-7195. The examiner can normally be reached on Monday - Friday 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph E. Avellino can be reached on 571-272-3905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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800-786-9199 (IN USA OR CANADA) or 571-272-1000

/H. R./

Examiner, Art Unit 2458

/Joseph E. Avellino/

Supervisory Patent Examiner, Art Unit 2458